

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL INSURANCE COMPANY, :

Plaintiff, : Civil Action No.: 08-cv-06948
 : (LAK) (JCF)
- against - :
BRITISH AIRWAYS PLC, : **ANSWER OF BRITISH**
 : **AIRWAYS PLC**
Defendant. :
-----X

Defendant BRITISH AIRWAYS PLC ("BRITISH AIRWAYS"), by and through its attorneys, Clyde & Co US LLP, for its Answer to the Indorsed Complaint states upon information and belief:

1. Denies the allegations set forth in the Indorsed Complaint.

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

2. The Indorsed Complaint fails to state a claim against BRITISH AIRWAYS upon which relief can be granted.

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

3. The transportation out of which the subject matter of this action arose was "international carriage" within the meaning of a treaty of the United States known as the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999, ICAO Doc. No. 9740 (entered into force November 4, 2003), *reprinted in* S. Treaty Doc. 106-45, 1999 WL 333292734 (hereinafter "Montreal Convention"), and the rights of the parties are governed exclusively by the provisions of the said Montreal Convention.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

4. The liability of BRITISH AIRWAYS, if any, is limited pursuant to Article 22 of the Montreal Convention and/or BRITISH AIRWAYS' tariffs and conditions of carriage as set forth in the relevant contract of carriage.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

5. Pursuant to its tariffs and conditions of carriage as set forth in the relevant contract of carriage, and/or the applicable local law, BRITISH AIRWAYS is not liable to plaintiff or, in the alternative, BRITISH AIRWAYS' liability is limited.

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

6. The alleged damages complained of were caused or contributed to by the negligence of parties other than BRITISH AIRWAYS and for whom BRITISH AIRWAYS is not responsible and, therefore, BRITISH AIRWAYS is not liable to plaintiff.

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

7. The alleged damages complained of were not proximately caused by any negligence or culpable conduct on the part of BRITISH AIRWAYS.

**AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE**

8. BRITISH AIRWAYS is not liable to plaintiff for the loss or damage described in the Indorsed Complaint because the alleged loss or damage was caused or contributed to by the negligence of plaintiff or its agents, servants or employees.

**AS AND FOR AN EIGHTH
AFFIRMATIVE DEFENSE**

9. Plaintiff failed to mitigate its damages, if any, and, therefore, plaintiff is barred from recovering any such damages from BRITISH AIRWAYS.

**AS AND FOR A NINTH
AFFIRMATIVE DEFENSE**

10. The alleged damages were caused and brought about by an intervening and superseding cause and were not caused by BRITISH AIRWAYS, or by a person for whom BRITISH AIRWAYS is responsible.

**AS AN FOR A TENTH
AFFIRMATIVE DEFENSE**

11. BRITISH AIRWAYS is not liable to plaintiff as BRITISH AIRWAYS fully satisfied its obligations under the contract.

**AS AND FOR AN ELEVENTH
AFFIRMATIVE DEFENSE**

12. The Indorsed Complaint is barred by the doctrine of accord and satisfaction.

WHEREFORE, defendant BRITISH AIRWAYS PLC demands judgment dismissing the Indorsed Complaint in its entirety or, alternatively, judgment limiting its liability pursuant to the forgoing, along with such further and different relief as this Court may deem just and proper.

Dated: New York, New York
August 8, 2008

Yours, etc.,

CLYDE & CO US LLP

By: 

Diane Westwood Wilson (DW 0520)

Attorneys for Defendant
BRITISH AIRWAYS PLC
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 710-3900

To: Harold Kingsley, Esq.
KINGSLEY, KINGSLEY & CALKINS
Attorneys for Plaintiff
91 West Cherry Street
Hicksville, New York 11801
(516) 931-0064

0807970

JUDGE KAPLAN
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV 6948

FEDERAL INSURANCE COMPANY,

Plaintiff,

- against -

BRITISH AIRWAYS PLC,

Defendant.

Civil Action No.

RULE 7.1 STATEMENT

U.S.D.C. S.D. N.Y.
CASHIERS

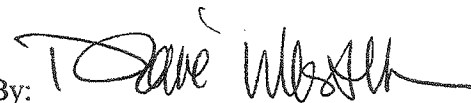
Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, and to enable Judges and Magistrates of the Court to evaluate possible disqualification or recusal, the undersigned attorney of record for defendant BRITISH AIRWAYS PLC certifies that there are no corporate parents or any publicly held corporation that owns 10% or more of its stock.

Dated: New York, New York
August 4, 2008

Yours, etc.,

CLYDE & CO US LLP

By:



Diane Westwood Wilson (DW 0520)

Attorneys for Defendant
BRITISH AIRWAYS PLC
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 710-3900

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Kristi Allan, being duly sworn, deposes and says that deponent is not a party of this action, is over 18 years of age and resides in Weehawken, New Jersey. On August 8, 2008, deponent e-filed with the Court and served courtesy copies of the ANSWER OF BRITISH AIRWAYS PLC upon:

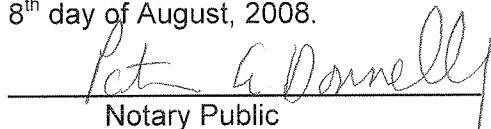
Harold Kingsley, Esq.
KINGSLEY, KINGSLEY & CALKINS
91 West Cherry Street
Hicksville, New York 11801

The address(es) designated by said attorney(s) for that purpose by depositing a true copy thereof enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



Kristi Allan

Sworn to before me this
8th day of August, 2008.


Notary Public

PATRICIA A. DONNELLY
Notary Public, State of New York
No. 01DO5087441
Qualified in New York County
Commission Expires Nov. 30, 2009